IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 154

MANUEL D. TALLEY,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

ON A WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

PETITIONER'S OPENING BRIEF

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Opinion Below

The opinion of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles was by a divided court (2-1), Swain, *J.* concurring in a separate opinion [R. 34], and Bishop, *P.J.* dissenting in a separate opinion [R. 34-36]. Said opinions are reported in 332 P. 2d 447. The trial court rendered a brief oral opinion only [R. 14-15].

Jurisdiction

(a) Petitioner seeks review of the judgment of the Appellate Department of the Superior Court of the State of

California, in and for the County of Los Angeles, entered and filed on November 17, 1958 [R. 27, 34, 36]. Time to file a petition for writ of certiorari was extended to April 16, 1959, by order of Mr. Justice Douglas dated February 12, 1959.

The Appellate Department of the Superior Court is the highest state court available to petitioner (California Constitution, Article VI, Secs. 4(b) and 5; *People* v. *Reed*, 13 Cal. App. 2d 39, 56 P. 2d 240; *Alberts* v. *California*, 354 U.S. 476, 481, n. 6).

The order of this Court granting petitioner's petition for Writ of Certiorari and granting him leave to proceed *in forma pauperis* was made on June 29, 1959 [R. 38]. The case was docketed in this Court the same date [R. 38].

(b) Petitioner was found guilty [R. 15, 23] in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, under a one count complaint [R. 1], charging him with a violation of Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000). Upon the finding of guilt thereunder, petitioner was sentenced to pay a fine of ten dollars ($10.00), and in case of default in such payment, to be imprisoned in the City Jail of the City of Los Angeles at the rate of one day for each five dollars of said fine [R. 23].

Said complaint [R. 1] charged that on or about March 22, 1958, petitioner violated Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000) in that he "did wilfully and unlawfully in the City of Los Angeles, distribute a handbill which did not then and there have printed on the cover and on the face thereof, the name and address of the person who printed, wrote, compiled or manufactured the said handbill, and the name of the person who caused the same to be distributed and the true names and ad-

dresses of the owners, managers or agents of the fictitious person and club which sponsored said handbill."

The constitutional validity of Section 28.06 of the Municipal Code of Los Angeles was drawn in question in the grounds of appeal [R. 25-26], and before the trial court [R. 14-15], on the ground that it abridged freedom of speech, on its face and as applied to petitioner, in violation of the First and Fourteenth Amendments to the United States Constitution, and upon the additional ground that it was repugnant to the equal protection and due process provisions of the Fourteenth Amendment.

The state court, in affirming the validity of Section 28.06, rejected petitioner's assertions that the ordinance was repugnant to the free speech provisions of the First and Fourteenth Amendments to the United States Constitution, Presiding Judge Bishop dissenting.

(c) This Court's jurisdiction to review the judgment is conferred by title 28, United States Code, Section 1257(3).

Constitutional Provisions and Statutes Involved

The pertinent provisions of the First and Fourteenth Amendments to the Constitution of the United States and Section 28.06 of the Los Angeles Municipal Code (Ord. No. 77,000) are set forth in Appendix "A" hereto.

Questions Presented

1. Whether the ordinance at bar, Section 28.06 of the Los Angeles Municipal Code, Ordinance No. 77,000, by prohibiting the anonymous or pseudonymous publication, sponsorship and distribution of handbills *anywhere* in the City of Los Angeles at *any* time, under *any* circumstances, upon

its face and as construed and applied to petitioner, by the holdings of the courts below, and the prosecution thereunder of the petitioner in the instant case, arbitrarily deprives persons, including petitioner, of their liberty and property without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2. Whether the ordinance in the instant case, Section 28.06 of the Los Angeles Municipal Code, Ordinance No. 77,000 upon its face and as applied to, and construed as to petitioner, by the holdings and opinions of the courts below that Los Angeles may, in the exercise of its police power, compel the disclosure of the identities and addresses of the author, publisher and distributor of a handbill as a condition for its publication and circulation, abridges freedom of speech and press guaranteed by the provisions of the First and Fourteenth Amendments to the United States Constitution.

3. Whether the ordinance at bar, Section 28.06 of the Los Angeles Municipal Code, Ordinance No. 77,000, upon its face, and as construed and applied to petitioner, by proscribing the anonymous and pseudonymous publication and circulation of handbills only, without including within the proscription books, magazines and newspapers, arbitrarily denies petitioner equal protection of the laws in violation of the Due Process and Equal Protection provisions of the Fourteenth Amendment to the United States Constitution.

Statement of the Case

(a) The case against petitioner was as follows: The Deputy City Prosecutor and Counsel for the petitioner stipulated to the following facts: That petitioner was distribut-

ing handbills on March 22, 1958, at 55th and Holmes Avenue, in the City of Los Angeles [R. 3-4]; that the arresting officer, Sergeant McClennon, and three other witnesses received handbills distributed by petitioner on that day and at that place [R. 4]; and that two such handbills so distributed by petitioner [R. 17-20] be received into evidence [R. 4]. Said two handbills were thereupon received into evidence by the court as one Exhibit, People's Exhibit 1 [R. 4], and the People rested its case.

The petitioner called three witnesses to the stand in an effort to show that said ordinance was being enforced unequally as to him. The first witness, Mr. Earl Lacour, an employee of the A and D Market, located at 5501 Holmes Avenue [R. 5], was shown a document which he identified as an advertisement of food sales at the A and D Market [R. 6], and testified that the Market had distributed similar handbills on the public streets of Los Angeles every weekend [R. 6], and, to his knowledge, the Market had never been prosecuted therefor [R. 7]. Thereafter, said advertisement was offered and received into evidence as defendant's Exhibit A [R. 7].

On cross examination, the witness testified that the A and D Market had not manufactured or circulated Exhibit A [R. 7-8].

Petitioner then took the stand and testified in his own behalf to the effect that he had not seen Exhibit A posted on the door of the A and D Market [R. 9] until *after* his arrest on March 22, 1959 and such handbills as Exhibit A contained no identification or address of the writer, compiler or manufacturer thereof [R. 9]. The Deputy City Attorney and petitioner's Counsel then stipulated between them that the A and D Market, a supermarket, was a fictitious name [R. 10].

Petitioner was then shown a document which he identified as another handbill advertising a food sale at the A and D Super-Market, 55th and Holmes [R. 10], and which, according to petitioner's testimony, bore a change in the format in that it contained the identity of the printer [R. 10]. Said document was thereupon offered and received into evidence as defendant's Exhibit "B" [R. 11]. Both Exhibits "A" and "B" are contained in the Record at bar, at pages 20A and 20B.

On cross examination, petitioner further testified that he had received Exhibit B "from a person living in the community" who stated that he found it on his gate [R. 11]. On redirect, petitioner amplified his previous testimony by stating that the house to which Exhibit B had been delivered was on a public thoroughfare [R. 12].

A third witness called by petitioner was excused after identifying himself and denying past or present employment by the A and D Market [R. 12].

Mr. Lacour was then recalled to the stand by petitioner, but testified that he did not know whether or not A and D Market was incorporated [R. 13].

(b) The trial court held the "defense of unconstitutionality based upon lack of uniform enforcement" fell short of proof, and concluded from the evidence that the petitioner had violated the ordinance [R. 14]. The trial judge felt that he could not hold the ordinance an unconstitutional abridgment of free speech in that he was bound by the opinion of the Appellate Department which had ruled adversely to that contention in *People* v. *Arnold*, 127 Cal. App. 2d Supp. 844, 273 P. 2d 711 [R. 15].

A motion for new trial was made by petitioner on the grounds of unconstitutionality and unequal enforcement of the laws, which motion was denied [R. 15].

The Appellate Department reaffirmed its decision in the *Arnold* case, *supra*, holding that the ordinance was not violative of the Free Speech and Due Process Clauses of the First and Fourteenth Amendments to the United States Constitution.

The court hold that the ordinance placed no restriction on speech, and that the contention that someone might hesitate to speak if he was required to identify himself was too speculative a possibility to warrant holding the ordinance unconstitutional [R. 28]. The majority believed the requirement of disclosure was germane to the police power because "The right of 'free speech' is accompanied by correlative responsibility for its abuse" [R. 28-29]. The majority reviewed the decisions of this court, but found no "authentic rapping medium" from any of them which would control a determination of the constitutionality of the ordinance at bar [R. 32]. Judge David, writing for the Court, was unable to distinguish *People ex rel. Bryant* v. *Zimmerman* (278 U.S. 62) from *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, "Except that [one organization] was considered malignant, and the other benign," and that "disclosure was only sought as a prelude to the deprivation of other constitutional rights; not a speculative but an imminent deprivation." [R. 31]. Judge Swain, concurring, found "The distinction which Mr. Justice Harlan draws between the two seems to be that the members of N.A.A.C.P. are good guys and the members of Ku Klux Klan are wicked men." [R. 34]

The court's approach to the Free Speech and Due Process issues of the case was that a presumption of reasonableness and constitutionality attended every statute [R. 33] which presumption did not disappear when the ordinance was challenged as violative of the First Amendment "but is merely balanced by it" [R. 33]. The majority thought

it would require "a clear and strong conviction" of incompatibility between the ordinance and the Fourteenth Amendment before the former could be declared void [R. 33].

The court held the ordinance at bar, on its face and as applied and construed, was not repugnant to the First and Fourteenth Amendments to the United States Constitution [R. 27-34].

Bishop, *P.J.* dissenting found the ordinance, on its face and as applied to petitioner, too broad, and an abridgment of freedom of speech and press as guaranteed by the First and Fourteenth Amendment to the Constitution of the United States [R. 34-36]. The dissenting judge rejected the notion that public policy required sustaining the ordinance, stating in his opinion:

> "The purpose of the Municipal Code provision is fairly obvious; it is to make it easy for the state, or for any individual injured by a handbill, to pin the responsibility upon him who caused it to be made and distributed, by requiring him to leave a trail to his door. In order to accomplish this purpose in the relatively few instances where there has been an abuse of the right freely to communicate ideas by handbills, (and plainly defendant's handbill was not obscene, libelous, nor did it otherwise abuse the right), the Municipal Code would impose restraint upon all occasions where it is desired to use them. I remain convinced that this may not be done."

ARGUMENT

Summary of Argument

1. The ordinance at bar, in forbidding the circulation of anonymous or pseudonymous handbills anywhere in the City of Los Angeles, under any circumstances, and irrespective of tone or content, is so broad that, on its face and as construed and applied to petitioner, it sweeps away freedom of speech and press as protected by the First Amendment speaking through the Fourteenth Amendment to the United States Constitution.

The majority of the Appellate Department treated the ordinance as presumptively valid, and argued that the free speech provisions of the First Amendment to the Federal Constitution merely *balanced* the presumption. If a legislature, operating under political, rather than judicial considerations, could thus determine the scope of a citizen's speech rights, then unpopular or even controversial ideas could be placed under legislative ban.

The Fourteenth Amendment, however, prohibits the state from interfering with or abridging the First Amendment liberties of its citizens unless a paramount societal interest compels the infringement. Even then, however, the regulation must be narrowly drawn to fit the intended evil, so that lawful speech will not be impaired.

The ordinance at bar is aimed at detecting and securing responsibility of those who abuse their speech rights. Of these there could be but a few, while the vast majority of writers or publishers who do not are nonetheless required to put their names to what they write. For a Negro like petitioner this could be a dangerous requirement, for although Los Angeles is not Little Rock, there is unfortu-

nately considerable racial tension and violence in the community.

The career of anonymity is a long and honorable one in our own history, no less than in Europe's. Indeed, it still serves a useful purpose, particularly as a means of encouraging the communication of ideas. This Court has recognized its importance when it refused, in *N.A.A.C.P.* v. *Alabama* (357 U.S. 449) to compel the disclosure of that organization's membership list to state officials.

If free men have the right to hold and express lawful ideas, they must also have the right to circulate such ideas upon terms they think best. It is not for the state to substitute its judgment for that of the writer or publisher. Such is the essence of liberty, and such be its conditions. The ordinance at bar does just that, and more: It puts the advocate of ideas under surveillance as well as to restrain his speech. This may not be the intention of the ordinance, but therein lies its defect and its vice. The ordinance is not drawn to fit the evil, but rather to suit the convenience of its administrators. Mere convenience, however, cannot be used as a bootstrap to constitutionality. There is just no pressing public interest in convenience which can be said to overcome the public interest in the free flow of information.

The ordinance is bad because it goes too far. It prohibits even lawful speech from being disseminated anonymously, and indeed, prohibits its distribution whether in a church, a private dwelling or a grocery store.

As applied to petitioner, the ordinance is revealed in its most ominous tendencies. For in reaching petitioner's tract, it arrested the distribution of speech advocating the abolition of racial discrimination in employment. As the dissent pointed out in the court below, petitioner's pamphlet was

"plainly . . . not obscene; libelous, nor did it otherwise abuse the right" [R. 36]. Why then prevent its dissemination, unless opposed to its message?

Obviously, the ordinance on its face and as construed and applied to petitioner abridges freedom of speech and press, arbitrarily restricts the circulation of ideas freely within the community, and transgresses on privacy. The ordinance thus deprives petitioner of his liberty and property without due process of law in violation of the First and Fourteenth Amendments.

2. The Fourteenth Amendment to the Federal Constitution also guarantees equal protection of the laws. This does not mean that things unequal in fact are to be treated equal in law; but rather that persons in similar circumstances must be similarly treated.

The ordinance does not do this. Though its purpose is to expose and secure responsibility for unlawful speech appearing in handbills, the latter is no less a means of communication than the book or periodical. The pamphlet contains no greater capacity for abuse than any other form of communication unless it is contended that its relatively lower cost renders it, somehow, a more dangerous instrumentality. Such assumption is obviously untrue, and besides, one's right to protection of the First Amendment cannot be conditioned on the size of his pocketbook.

The curious fact is, however, that the ordinance disfavors the *lawful* speech of the anonymous pamphleteer, while ignoring the commercial, though *unlawful*, speech of the anonymous writer and publisher of books.

Moreover, the ordinance withholds the protection of First Amendment freedoms from the *lawful* speech of the anonymous writer and distributor of handbills, while leaving

those who anonymously put the *same* speech into a book or magazine to remain protected under the First Amendment.

Manifestly, the ordinance bears no reasonable relation to its purpose, and constitutes an arbitrary deprivation of liberty and property without due process of law, and denies equal protection of the laws in contravention of the First and Fourteenth Amendments to the United States Constitution.

I

The Ordinance at Bar Is Void on Its Face and as Applied Because So Broad as to Abridge First Amendment Liberties as Protected by the Fourteenth Amendment to the Federal Constitution.

A. *The Distribution of Anonymous Leaflets Is Protected from State Action by the First Amendment to the United States Constitution, Speaking Through the Fourteenth.*

The First Amendment to the Federal Constitution provides in pertinent part, as follows:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

Speech and press which is protected by the First Amendment is likewise protected from state action by the Fourteenth Amendment (*Kingsley International Pictures* v. *Board of Regents*, 360 U.S. 684; *Staub* v. *City of Baxley*, 355 U.S. 317; *Lovell* v. *City of Griffin*, 303 U.S. 444). Municipal ordinances adopted under authority of the State constitutes state action (*Staub* v. *City of Baxley, supra*; *Lovell* v. *City of Griffin, supra*).

The ordinance at bar[1] forbids all speech disseminated anonymously by handbill[2] under *any* circumstances *anywhere* in the City of Los Angeles.[3] Its object, as reflected by the judicial gloss given by the Appellate Department, is to "leave a trail" to the door of those who utter libelous or obscene statements.[4] On the other hand, petitioner's conviction thereunder was for distribution of pseudonymous leaflets advocating boycott of a store whose owner refused to cooperate in a program designed to end racially discriminatory employment practices.[5] Thus, petitioner is being punished not for what he said, but because he said it under a fictitious name; and for speech clearly not punishable,[6] or even within the intendment of the ordinance.

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[1] See Appendix "A."

[2] Sec. 28.00 of the Los Angeles Municipal Code defines "handbill" as follows:

> "'HANDBILL' shall mean any handbill, dodges, commercial advertising circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter calculated to attract attention of the public."

[3] The City of Los Angeles has a population of 2,243,901 (source: 1959 World Almanac, published by New York World-Telegram), spread over some 453.47 square miles (source: p. 398, Vol. 14, Encyclopaedia Britannica). Within its perimeter are many incorporated municipalities in whose jurisdictions the ordinance would not apply.

[4] See: dissenting opinion of Judge Bishop, at R. 36; and majority opinion of Judge David, at R. 28-29. See also: *People* v. *Arnold* (1954), 127 Cal. App. 2d Supp. 844, 273 P. 2d 711.

[5] People's Exhibit No. 1, at R. 17-20.

[6] See: Dissenting opinion of Bishop, P.J. at R. 36.
Since appellant's conviction the California Legislature has enacted a Fair Employment Practices Act; An Act to add Part 4.5 (commencing with Section 1410) to Division 2 of, and to amend Section 56 of, the California Labor Code (West's California Legislative Service (1959) No. 3, p. 193, et seq.). Moreover, in December, 1959, the Los Angeles County Board of Supervisors made a finding

> "That prejudice, intolerance and discrimination against any individual or group because of race, religion, national origin

That the First Amendment guarantees of free speech and press extend to handbills has long and often been recognized by this Court (*Lovell* v. *City of Griffin*, 303 U.S. 444; *Schneider* v. *Irvington*, 308 U.S. 147; *Jamison* v. *Texas*, 318 U.S. 413; *Martin* v. *Struthers*, 319 U.S. 141; compare: *Marsh* v. *Alabama*, 326 U.S. 501; *Tucker* v. *Texas*, 326 U.S. 517).

Furthermore, those guarantees not only secure the publication of leaflets, but their distribution as well (*Lovell* v. *Griffin*, *supra*, p. 452; *Martin* v. *Struthers*, *supra*).

> "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." [*Ex Parte Jackson*, 96 U.S. 727, 733]

These decisions accept free speech and press as more than personal rights; that, in fact, democracy, by definition, is absolutely dependent upon them (*Grosjean* v. *American Press Co.*, 297 U.S. 233, 250). The wisdom and success with which a people govern themselves turn in a very real sense on the accessibility of ideas, and the liberty to debate them. Although the struggle for freedom has been constricted into a history lesson, the preservation of its ideals is a mandate for peaceful reform (*DeJonge* v. *Oregon*, 299 U.S. 353, 365). Hence, the need to acquire information commands a substantial public interest in making secure the routes by which it travels—however humble or limited. It follows that the state may not itself obstruct the channels of communica-

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or cultural background promote tension and conflict; that such prejudice, discrimination, tension and conflict are, therefore, a menace to peace and public welfare . . ." Ordinance No. 7425, dated December 13, 1959, Administrative Code of Los Angeles County.

The text of this ordinance is being lodged with the Clerk of this Court for the convenience of the court.

tion in an effort to safeguard them from abuse by others (Compare: *Saia* v. *New York*, 334 U.S. 558 at 561).

But no less fundamental to a free society is the right of privacy (*American Communications Ass'n* v. *Douds*, 339 U.S. 382, 402; concurring opinion *Sweezey* v. *New Hampshire*, 354 U.S. 234, 265; concurring opinion, *Rumely* v. *United States*, 345 U.S. 41, 57). If government is forbidden from conducting an arbitrary search of one's home and papers (*Johnson* v. *United States*, 333 U.S. 10), it is prohibited from prying into his conscience at all (*West Virginia State Board of Education* v. *Barnette*, 318 U.S. 624, 636; *United States* v. *Ballard*, 322 U.S. 78, 86-87). Even when authorized, a search must be confined to the matter which prompted it (*United States* v. *Rabinowitz*, 339 U.S. 56, 64, fn. 6; *United States* v. *Lefkowitz*, 285 U.S. 452; *Go-Bart Co.* v. *United States*, 282 U.S. 344). So here, the power to seek out and punish the libeler and the pornographer cannot be expanded into a general right to snoop (*Watkins* v. *United States*, 354 U.S. 178, 200; cf. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449). For free speech guarantees are meaningless when the speaker and his audience believe they are under official surveillance. Thus, the public has a vested interest in maintaining an independence and integrity of thought, as well as the public expression of it. That interest naturally is jeopardized whenever the state exhibits too great a concern in what is said, and who has said it.

The right of privacy and speech is not absolute, of course, but must be carefully balanced against other public interests pressing for supremacy. The problem is in deciding what weights to place on the weighing pans. While the Appellate Department groped for an "authentic rapping medium" (R. 32) with which to resolve the question (R. 30-32), it is obvious that the court's failure to find one was

attributable to a cavalier acceptance of whatever the Municipal Legislature offered as the more substantial interest. The fact that petitioner's fundamental rights are to be weighed against a public interest declared by a legislative body to be substantial does not, as the court below thought (R. 32), elevate the latter to a primary position, or even signify their equality. The dimension and appeal of petitioner's ideas do not enjoy constitutional protection only when it suits the legislature. On the contrary, petitioner's right to speak was as broad and long as the street on which he uttered it (*Jamison* v. *Texas*, 318 U.S. 413, 415-416; *Schneider* v. *Irvington*, 308 U.S. 147, 160); as substantial as the color of his skin appeared to those who thought it important (*National Association for Advancement of Colored People* v. *Alabama*, 357 U.S. 449); as impressive as the listener chose to treat it (Compare: *Martin* v. *Struthers*, 319 U.S. 141, 148). To equate his liberty of speech with a legislative justification for abridging it is to submit the basic rights of free men to legislative whim. Manifestly, freedoms guaranteed by the First Amendment are neither debatable, nor subject to vote (*West Virginia Board of Education* v. *Barnette*, *supra*, at p. 638). Thus, while freedom of speech, press and privacy may not be absolute, neither will they give way to a competing interest served up simply on a presumption of reasonableness (see: concurring opinion, *Sweezey* v. *New Hampshire*, *supra*, at p. 265; *Speiser* v. *Randall*, 357 U.S. 513). The fact is, the primary base of First Amendment freedoms is that it is essential to ordered liberty, not only because constitutionally protected, but because they are the *raison d'etre* of a free society. A competing public interest must therefore come equipped with clear and convincing evidence that its claims for supremacy are urgent, substantial and relevant (*N.A.A.C.P.* v. *Alabama*, *supra*, at pp. 465-466; concurring

opinion, *Sweezey* v. *New Hampshire*, at p. 265; *Thomas* v. *Collins*, 323 U.S. 516). Whether or not it does is ultimately for the courts (*Thomas* v. *Collins*, 323 U.S. 516, 529; *Cantwell* v. *Connecticut*, 310 U.S. 296, 307). So will the channels of communication be best protected from expedient political judgment, while affording fair notice of the constitutional limits which government may reach in its eternal campaign to remedy mischief.

Tested by the foregoing principles it is clear that the ordinance at bar must bow to liberty. The public interest in securing the responsibility of a few pornographers and libelers seems even less compelling than keeping the streets clean (*Schneider* v. *Irvington*, 308 U.S. 147; *Lovell* v. *Griffin*, 303 U.S. 444), or preserving the peaceful slumber of defense workers (*Martin* v. *Struthers*, 319 U.S. 141), or guarding the pocketbooks of citizens from fraudulent solicitation (*Staub* v. *City of Baxley*, 355 U.S. 313; *Thomas* v. *Collins*, 323 U.S. 516). Yet, in all these cases, the public interest underlying the ordinance was deemed subservient to the liberty which it was abridging.

In contrast, however, anonymity comes to this Court with an impressive history, and a vital, practical currency.

The origins of anonymity are vague, although it is interesting to find early Protestant leaders, such as Erasmus and Luther, casting grave doubts on the authorship—and hence the authenticity—of some biblical writings.[7] Considering the severe penalties[8] for heresy during the religious controversies of the Renaissance and Reformation, it sur-

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[7] Taylor and Mosher, *The Bibliographical History of Anonyma and Pseudonyma*, Univ. of Chicago Press (1951), at p. 32.

[8] Sentences ranged from penances and fasting to torture and death by fire or strangulation; and for the more serious offenses confiscation of property which was then divided between secular authorities and the church. Pfeffer, *Church, State and Freedom*, p. 19.

prises no one to discover at least three out of four critics of Church doctrine were anonymous.[9] At first, it was the Protestant scholar who invoked anonymity in order to conduct searching inquiry into the authorities on which the medieval church deposited its doctrines. Church ecclesiastics met this practice by compiling and condemning as blasphemous all suspected pseudepigrapha (i.e. spurious religious writings masquerading under forged or falsely claimed authorship). Soon, one Thomas James published his "Bastardie of the False Fathers", wherein he attempted to show how the church authorities had themselves relied on works which they had suspected and denounced.[10]

Once Protestantism had gained acceptance, however, its leaders promptly condemned hemenism (i.e. anonymously written heresy) as a sin. Even so, an eminent Lutheran theologian complained that these heretics were escaping punishment:

> "For if the authorities would punish them, they say that they did not do it because their names do not stand before such writings. So they contradict everybody."[11]

Not unnaturally, this ecclesiastic overlooked the fact that Martin Luther had himself attacked Church orthodoxy under the name Fridericus Fregosus, and that Calvin had written his heresies as Alcumius Lucianus, when both were still struggling to win converts to Protestantism.[12]

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[9] Taylor and Mosher, ibid, p. 187.

[10] Taylor and Mosher, ibid, at pp. 51-52.

[11] Attributed to Johan Wigand (1523-87), who likened hemenists to "'an army of grasshoppers who undertake to darken the rays of the sun.'" Taylor and Mosher, ibid, p. 92.

[12] Taylor and Mosher, ibid, at p. 86.

By the turn of the 18th Century, some 6,000 anonymous and pseudonymous works had been chronicled, although not all of them were involved in religious controversy.[13]

Today, however, when non-conformity is punished essentially by job loss and public obloquy,[14] rather than by the rack and screw, heretical writers have sometimes resorted to pseudonym in order to earn a livelihood.[15]

Anonymity is sometimes used to open minds which are closed even when ecclesiastical and political authority are not standing guard over them. In 1869, for example, a scholar was able to compile a bibliography devoted to the identification of authors who had written under titles of nobility that did not belong to them.[16] And when the world

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[13] Taylor and Mosher, ibid. at p. 132. That figure must certainly have been enlarged in the ensuing one hundred years, since Voltaire was but one of approximately 160 names used by that famous political essayist (Taylor and Mosher, ibid. at p. 134). Moreover, Romanized pseudonyms were extremely popular in the formative years of the American Republic. Daniel Leonard set forth his opposition to the Revolution as "Massachusettensis," and John Adams replied as "Novangalus." Later, Hamilton, Madison and Jay penned the Federalist papers under the name Publicus, which prompted New York's Governor, George Clinton, to answer as "Cato." (Coker, *Democracy, Liberty and Property* (1948) MacMillan Press, p. 118.)

[14] See: John Cogley, Report on Blacklisting, Vol. I, at pp. 146, 131-143, 149; Vol. II, pp. 168, 173-191. This study, published in 1956 by The Fund for The Republic, recounts, *inter alia*, the employment difficulties in the Motion Picture, Television and Radio industries, of actors, writers and others associated with unpopular causes. Significantly Mr. Cogley deemed it necessary to withhold the names of some of the persons whose blacklisting experiences he records.

[15] The practice of blacklisting in the motion picture industry came up with a Rabelaisian twist when it developed that one Robert Rich, who, in 1956, was presented with an academy award for his screen play "The Brave One," was none other than Dalton Trumbo, a blacklisted screen writer (Los Angeles Times, Jan. 17, 1959, Part I, at p. 3).

[16] Quérard, *Les Supercheries*, Vol. I, Cols. 118-34; from Taylor and Mosher, ibid. at p. 179.

was still considered exclusively man's, George Eliot, John Oliver Hobbs and George Sand successfully advanced their cause, or their talents, under male pseudonyms.[17]

Indeed, the pseudonym "National Consumers Mobilization," appearing on the leaflets at bar [R. 17, 19], may well have been designed to impute wide support and prestige to ideas which had neither.

Fear of disgrace or embarrassment probably accounts for the reason why over 1,000 works have been signed "By a Lady";[18] and why the eminent mathematician and clergyman, Rev. Dr. Charles Lutwidge Dodgson, gave to the world's children Alice in Wonderland as Lewis Carroll.[19]

On the other hand, there are some who seek to persuade by force of the idea, rather than by the reputation of its proponent. Izaak Walton published his first edition of "*The Compleat Angler*" anonymously for just such reason.[20]

The social importance of anonymity in American life is signified by its current popularity among even the most respected authorities. The influential periodical, "Foreign Affairs" frequently carries pseudonymous essays on international policy, not the least of which was the famous "X"

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[17] Halkett & Laing, *Dictionary of Anonymous and Pseudonymous English Literature* (1926), Vol. I, at p. xiii. Taylor & Mosher, ibid, at p. 179.

[18] Encyclopaedia Britannica (1957), Vol. 2

[19] A pseudonym devised, incidentally, by a complex mathematical inversion of his true name, Halkett and Laing, ibid, at p. xiv.

[20] Taylor and Mosher, ibid, at p. 82.

The weekly journal MANAS, published anonymously out of Los Angeles, California, and sent to subscribers throughout the world, contains on page 4 of each edition the following explanation:

"Editorial articles are unsigned, since MANAS wishes to present ideas and view points, not personalities.

The Publishers"

A copy of MANAS is herewith lodged with the Clerk for the Court's convenience.

article, "*The Sources of Soviet Conduct*," which formulated United States policy toward the Soviet Union.[21]

Recognition that some ideas are more freely enunciated when the author's identity is withheld is reflected by the prevalence of initialed letters to the editor, the secret ballot and the weighty pronouncements of that oft-quoted government official, "Reliable Source".

But anonymity is perhaps never so important as when protecting those who advocate social reform. As one thoughtful writer points out, the really significant ideas are often unpopular at first, and therefore need to be nurtured in darkness until strong enough to compete in the market place.[22] People usually resent change, and greet it only with hostile reluctance. For this reason, ideas which tamper with deep-rooted prejudices may expect to encounter serious—and even violent—opposition.[23] The simplest way to discourage such opinions, therefore, is to expose their proponents to a resentful community. Such is the case here:

At the time of petitioner's conviction, California had no law prohibiting racial discrimination in employment, and occasional efforts to enact one had been unsuccessful. This did not mean that California had no race relations prob-

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[21] Robison, *Protection from Compulsory Disclosure of Membership*, 58 Columbia L.R. 614, 633.

[22] Robison, ibid, p. 633.

[23] The trade union movement, particularly in formative periods, has frequently found it necessary to conceal its membership lists from the prying eyes of labor spies and unsympathetic employers. Such practice has not only been recognized, but is approved, by the National Labor Relations Board (*Matter of McLachlan & Co.*, 45 NLRB 1113, 11-20-1121; *Matter of Revlon Products Co.*, 48 NLRB 1202, 1207-09; *Matter of Peter J. Schweitzer, Inc.*, 54 NLRB 813, 818), and by the courts see, *Warehouse & Cold Storage Co.* v. *NLRB*, 136 F. 2d 828 (9th CCA); *Kansas City Power and Light Co.* v. *NLRB*, 111 F. 2d 340, 349; *Local 309, etc.* v. *Gates*, 75 F. Supp. 620.

lems, but rather left them to be resolved by persuasion and voluntary cooperation. Petitioner was doing no more than this at the time of his arrest; but he did so against a background of racial tension and violence.

California is not Alabama, nor is Los Angeles a Little Rock. But racial hate and prejudice does not disappear simply because not legalized by statute. The Mason-Dixon line is a mere boundary separating states having bigoted laws from bigoted states of mind. Cross-burnings, race riots and segregated living are the progeny of fear and insecurity—immigrating from places where ignorance is bliss;[24] breeding wherever the status is quo.[25]

To say that since 1943, Los Angeles has been, and still is, a nidus of racial strife and tension is to say only what has been admitted by the Los Angeles County Board of Supervisors,[26] and reported by its agencies[27] and by the local press.[28] Having said this, however, is only to acknowledge

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[24] Memorandum on Minority Groups in Los Angeles County, of the Los Angeles County Commission on Human Relations, dated January 19, 1959 (Revised) at page 2. A copy of said Memorandum is being lodged herewith with the Clerk of this Court for the Court's convenience; also lodged herewith are other documents to be referred to hereinafter in footnotes 25 to 40.

[25] A Report on the State of Human Relations in Los Angeles County, of the Executive Secretary, Commission on Human Relations, October 14, 1959, at p. 2.

[26] The County Board of Supervisors is the elective legislative body of and for the County of Los Angeles, an area encompassing the City of Los Angeles.

[27] See: Report of Activities, Committee on Human Relations of County of Los Angeles, May, 1957, at p. 2.

[28] The local press of Los Angeles includes the Los Angeles Times, a newspaper of general and widespread circulation in Southern California; and the Los Angeles Tribune and California Eagle circulated widely among the Negro community in Southern California.

In the Petition for Writ of Certiorari on page 6, footnote 13 thereof, reference is made to a number of incidents; and there has

the exigency of having someone preach the gospel of brotherhood in Los Angeles, without fully grasping the ugliness which may compel him to do so anonymously.

In 1957, local newspapers carried stories of cross-burnings on Negro lawns[27] and mob resistance to Negro home-buying in caucasian neighborhoods.[28] The following year, the press reported damage in a newly bought home of a Negro couple in Long Beach;[29] five policemen stormed into a Negro home with guns drawn, to ransack the house without a warrant as the family, including children, looked on;[30] and of vandalism upon a Negro doctor's home.[31] Indeed, in May, 1958, the Los Angeles County Committee on Human Relations recounted thirty-six (36) incidents of racial conflict,[32] including bombings, arson and vandalism to Negro property in fringe areas; gang fights between ethnic and racial groups; armed assaults upon women and youths of an "enemy" race; retaliatory attacks in classrooms and on

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already been lodged with the Clerk of this Court a portion of the Los Angeles Times for June 24, 1958 reading "Negro Doctor's Home Damaged by Vandals"; the California Eagle for June 27, 1957 carries the banner "Burn Cross, Warning of Death"; the California Eagle for July 17, 1958 with the headline, "Vandals Strike Again in Night at Home of Glendale Couple" and the California Eagle, November 20, 1958 carries the banner "Vet Barred from FHA Housing Tract."

[27] Los Angeles Tribune, January 30, 1957 and April 17, 1957; California Eagle, June 27, 1957; Los Angeles Sentinel, September 10, 1959.

[28] Los Angeles Tribune, January 16, 1957.

[29] Los Angeles Tribune, June 27, 1958.

[30] Los Angeles Tribune, February 13, 1959.

[31] Los Angeles Times, June 24, 1958, heretofore lodged with the Clerk.

[32] Nor were these all. In its Report of Activities, May, 1958, at p. 16, the Los Angeles County Committee on Human Relations claimed that many such incidents not involving severe injuries or death go unreported.

streets by members of an "offended" racial group; and protest meetings to oppose Negroes moving into "restricted" areas.[35]

By December, 1958, racial tensions and discrimination, especially among juveniles, had become so acute within the County that the Board reconstituted the Committee on Human Relations as a Commission, and empowered it, *inter alia* to study and investigate racial problems within the County, and to bring back recommendations for appropriate remedial legislation.[36]

Nevertheless, newspapers continued to report instances of police brutality toward Negro prisoners,[37] vandalism to a Negro minister's home,[38] and more burning crosses.[39]

In October, 1959, the Executive Secretary of the County Commission on Human Relations stated:

> " . . . There have been more incidents of tension in the County [Los Angeles] this year than at any time during the last five years—tensions ranging from an altercation between a land lord and his tenant, growing out of the land lord's objection to his tenant's entertaining their minority group friends in their apartment, to much more serious expressions of hate and fear. The more serious of these involved vandalism against several houses, to the appearance of a mob of fifty or sixty persons (one of whom was armed

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[35] Report on Activities, Los Angeles County Committee on Human Relations, May, 1958, at pp. 12-16.

[36] See: Ordinance No. 7425, dated December 13, 1958, adding Article XXIX to the Administrative Code of the County of Los Angeles.

[37] Los Angeles Tribune, April 17, 1959.

[38] California Eagle; September 17, 1959, page 1, col. 4.

[39] California Eagle, September 10, 1959, page 1.

with a rifle), to intimidate a Caucasian who had sold his home to a Negro." [10]

Indeed, on November 14, 1959 the Federal Civil Rights Commission announced that it will hold hearings in Los Angeles and San Francisco in January focusing on problems of racial discrimination (AP dispatch, Washington, D. C., Nov. 14, appearing in Los Angeles Times for November 15, 1959).

To say, on this record, that petitioner must affix his name and address to his speech is to withhold from one in the exercise of his liberty the shield that safeguards the informer.

Whether ideas sail under the banner of respectable authorship, or none at all, seems to bear little relevance to a legitimate interest of the State. A citizen, first of all, has the right to be let alone (compare: *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Thomas* v. *Collins*, 323 U.S. 516; Compare: *Rumely* v. *United States*, 345 U.S. 41). That is a right vital to liberty (*Zimmerman* v. *Wilson*, 81 F. 2d 847, 849). Its roots are imbedded deep in the wisdom of that English jurist who said:

> "It is certain that every man has a right to keep his own sentiments if he pleases: he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends." [11]

As observed in *Watkins* v. *United States*, 354 U.S. 178, 200:

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[10] A Report on the State of Human Relations in Los Angeles County, Executive Secretary of Commission on Human Relations, 10/14/59, at p. 2.

[11] Judge Yates, in *Miller* v. *Taylor*, 4 Burr. 2303, 2379, 98 Eng. Rep. 201, 242 (KB 1769).

> "[There is no] general power to expose where the predominant result can only be an invasion of the private right of individuals . . . "

And this Court has particularly recognized the necessity of protecting this right from pillory or intimidation (*N.A.A.C.P.* v. *Alabama*, *supra*, p. 463; *Barenblatt* v. *United States*, 360 U.S. 109, 134).

The nexus between the right of privacy and the exercise of First Amendment rights, calls for judicial scrutiny of the claims advanced by the City in justification of its ordinance (*N.A.A.C.P.* v. *Alabama*, *supra*; *Sweezey* v. *New Hampshire*, *supra*; *Thomas* v. *Collins*, *supra*). The liberty to speak signifies nothing if not accompanied by the right to circulate (*Lovell* v. *City of Griffin*, 303 U.S. 444, 452). But the right to circulate, to be meaningful, must be exercised upon terms deemed by the speaker most suitable to the effective promotion of his cause. That is a decision which must be left for the advocate to make, and the reader to judge. The City may not substitute its judgment for either (*Martin* v. *Struthers*, 319 U.S. 141, at pp. 141, 148).

Undoubtedly, the right of privacy and speech must accede to a compelling subordinating interest of the State (*N.A.A.C.P.* v. *Alabama*, 357 U.S. 463; *Sweezey* v. *New Hampshire*, 354 U.S. 234, 265). When privacy is used to cloak incitement to unlawful action, the time is at hand for the state to intervene (Compare: *People ex rel. Bryant* v. *Zimmerman* (1928), 278 U.S. 63). But Los Angeles can make no such claim here. The ordinance is not so drafted, and it was not so construed by the Appellate Department.[42]

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[42] Hence, this Court must accept the construction put on the ordinance by the Appellate Department, the latter being the highest state court passing on it (*Kingsley International Pictures* v. *Board of Regents*, 360 U.S. 684).

Nor is petitioner charged with unlawful incitement, or defamatory or obscene utterances.[43] The City has simply said to him, in effect: It is all right to speak and write, as long as you put your name to it. In short, given a background of racial violence, the State would restrict what is said by prescribing how it may be said. This the State may not do (*Thomas* v. *Collins*, 323 U.S. 516; Cf. *DeJonge* v. *Oregon*, *supra*).

A society dependent on well-informed public opinion can ill afford to lock out ideas merely because they come unlabelled. The Public's need to hear these opinions is just as important as the individual's right to express them. By asking *all* authors, publishers and distributors to put their names to what they say and write, Los Angeles has thereby imposed an unreasonable burden on the commerce of ideas, impeding their progress toward peaceful reform.

B. *The Ordinance at Bar Is So Broad That It Embraces Speech Having No Reasonable Relation to Its Purpose, and Therefore Violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.*

In proscribing the distribution of handbills "in any place, under any circumstances," the ordinance at bar transcends the bounds of reason or necessity.

Applied literally, the ordinance prohibits the dissemination of an anonymous circular whether at a union meeting, a church social or to one's friends in his own home. The ordinance prohibits distribution through the mails,[44] so

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[43] On the contrary, the dissenting judge characterized appellant's handbill as "plainly . . . not obscene, libelous . . . or otherwise [unlawful]" (R. 36).

[44] Mailing without identification is not an offense under the postal laws (*United States* v. *Chase*, 135 U.S. 255).

that a postman "distributing" the mails would conceivably come within its ban.

The ordinance embraces every kind of subject matter, irrespective of how expressed, or whether it may have any redeeming social value. It might even include an advertisement of a food sale, such as the two contained in the record at bar [R. 20A and 20B].

In balance, the ordinance at bar is too broad (*Staub* v. *City of Baxley*, 355 U.S. 313; *Jamison* v. *Texas*, 318 U.S. 413, 415-416; *Lovell* v. *Griffin*, 303 U.S. 444). Los Angeles asks too much; and much of what it asks bears no reasonable relation to what it seeks. There is nothing inherently libelous, obscene or fraudulent in anonymous speech which justifies its total proscription (compare: *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495; *Stromberg* v. *California*, 283 U.S. 359). Thus, by sweeping *all* speech within its ambit, the ordinance overreaches its objective, and in so doing, unnecessarily, and therefore, unlawfully, abridges protected activity (*Butler* v. *Michigan*, 352 U.S. 380; *Schneider* v. *Irvington*, 308 U.S. 147; *Martin* v. *Struthers*, 318 U.S. 141; *Thornhill* v. *Alabama*, 310 U.S. 88). Nothing appears in this record, or on the face of this ordinance, to show that the same objectives could not be reached by better draftmanship, or by traditional methods of law enforcement (*Butler* v. *Michigan*, *supra*).

It may be true that by asking all to identify themselves, the guilty are exposed, or at least, deterred from their unlawful pursuits. There are few, if any, statutes, however, whose laudable ends would not be more easily achieved by taking short-cuts through the fields of constitutional liberty (Jackson, *J.*, concurring in *Thomas* v. *Collins*, 323 U.S. 516, 547). But if mere convenience could excuse restraints on freedom, there would soon be little freedom left to restrain.

The myth of the ideal man who has nothing to hide begs the question: citizens simply resent being placed in a fish-bowl.[45] And when there is no better reason for putting them there than that offered by Los Angeles, it is time to yank them out.

C. *The Ordinance as Applied Deprives Petitioner of His Liberty Without Due Process of Law in Violation of the Fourteenth Amendment to the United States Constitution.*

Whether or not unlawful on its face, however, it is plain that the ordinance was applied in the instant case to punish speech which the State could not otherwise reach.

The record at bar reveals that petitioner was arrested for the mere act of *distributing* the leaflets in question on a Los Angeles street (R. 4). No claim was made at the trial, or since, that petitioner was disorderly, or that he thrust his messages into unwilling hands.[46] Nor is there evidence that petitioner was obstructing traffic, or preventing entry into and egress from the A and D Market.[47] Furthermore, the tenor and text of petitioner's pamphlets are a model of restraint and propriety—especially when it is considered what his stake is in its ideas.[48]

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[45] Borrowed from: Robison, *Protection from Compulsory Disclosure of Membership*, 58 Col. L.R. 614, 630.

[46] The evidence was only that the arresting officer received it [R. 4].

[47] The only evidence concerning petitioner's station is that he was distributing "at 55th and Holmes" [R. 4]. The address of the A and D Market is 5501 Holmes Avenue [R. 5], which would put its location at or near 55th and Holmes.

[48] Concededly, one of the leaflets makes an appeal for membership at twenty-five cents per month. But there is no contention here that such solicitation was unlawful, or made with the intention of enhancing petitioner's personal treasury.

Whatever pretensions Los Angeles makes to the title or control of its streets, it is clear that the City may not wholly deprive petitioner of their use for speech purposes (*Schneider* v. *Irvington, supra*, *Jamison* v. *Texas*, 318 U.S. 413, 415-416). Nor are moral, safety and welfare needs of the public satisfied by the suppression of lawful speech which grapples with those needs (*Thomas* v. *Collins*, 323 U.S. 516; *Cantwell* v. *Connecticut*, 310 U.S. 296).

The pamphlet expresses an idea: economic pressure to abolish racial discrimination in employment. That thought is not unlawful—at least in California.[49] Moreover, the leaflet does not *prescribe* a standard or level of Negro employment; only that there be *equal opportunity* for employment. As this Court has so often said, speech does not lose constitutional protection just because description has merged into lawful advocacy (*Thomas* v. *Collins*, 323 U.S. 516, 537; *Yates* v. *United States*, 354 U.S. 298, 318; cf. *Terminiello* v. *Chicago*, 327 U.S. 1).

Nevertheless, Los Angeles brings its police power to bear upon petitioner's speech simply because it is unlabelled. In short, the City is restricting what petitioner may say by ostensibly punishing him for saying it anonymously. It seems superfluous to add that if the demands of the ordinance carry its application this far, it cannot stand the test of constitutionality (*DeJonge* v. *Oregon*, 299 U.S. 353, 365).[50]

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[49] See: 30 Cal. Jur. 2d §116, p. 66.

[50] ". . . If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge." (299 U.S. at 365.)

II

Los Angeles Municipal Code Section 28.06 Constitutes an Arbitrary and Unreasonable Classification Which Denies Equal Protection of the Laws, and Thereby Deprives Persons of Their Liberty and Property Without Due Process of Law in Contravention of the Fourteenth Amendment to the United States Constitution.

The ordinance in question, while apparently aimed at securing responsibility for what is said, levels its sights only on those who say it through handbills. Hence, the Legislature has carved out pamphlets as the most likely instruments of unlawful speech. The history and contemporary use of leaflets belies the implication; but even if it was justified, the ordinance places an oppressive and discriminatory burden on those whose speech is lawful, though poorly financed.

The pledge of the Fourteenth Amendment, as we learn from *Yick Wo* v. *Hopkins*, 118 U.S. 356, is the protection of equal laws. This is not to say that things different in fact must be treated the same in law; but rather that those similarly situated must be similarly treated (*Truax* v. *Corrigan*, 257 U.S. 312).

Here, the City Council, presumably concerned with irresponsible and offensive speech, written and disseminated anonymously, has classified handbills as the subject of remedial action. Yet, the capacity for abuse inheres no less in the book and newspaper than in the leaflet. It is fair to ask then just what it is in the latter which renders it a reasonable subject for this ordinance. True, the pamphlet may be manufactured more quickly and cheaply than the book or newspaper, and is therefore more likely to be the mode of communication used by those of modest means. But the Constitutional protection is not less because the

bank account is smaller (*Edwards* v. *California*, 314 U.S. 160). Nor can we discern anything inherent in the handbill which makes it the better candidate for the dissemination of unlawful speech. On the contrary: libel and pornography seem to have greater commercial value when sold to the public in books and magazines than do petitioner's leaflets which were distributed free.

When there is clearly—

> " . . . No fair reason for the law which would not require with equal force its extension to those whom it leaves untouched," [51]

the law violates the Equal Protection Clause of the Fourteenth Amendment.

The vice of the ordinance is not, however, only that it discriminates arbitrarily between modes of communication, but that in doing so, it restrains *lawful* speech while ignoring the very speech it was intended to cover.

An ordinance which attempts to single out some speech, and particularly lawful speech, for regulation, necessarily invites judicial scrutiny (*Korematsu* v. *United States*, 323 U.S. 214, 216).

> " . . . Classification like the one with which we are here dealing is . . . opening the door to legalized experiment. When fundamental rights are thus attempted to be taken away, however, we may well subject such experiment to attentive judgment. The Constitution was intended—its very purpose was—to prevent experimentation with the fundamental rights of the individual." (*Truax* v. *Corrigan*, 257 U.S. 312, 338).

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[51] *Missouri, Kansas & Topeka Ry. Co.* v. *May*, 194 U.S. 267, 269.

This does not inevitably deprive a classification within First Amendment areas of constitutional validity, for having determined what the evil is, the State is given wide latitude in selecting the means for coping with it. On the other hand, because we are dealing with fundamental liberties, any such classification undertaken by the Legislature must find support in reason, necessity and preciseness.

The legislative scheme at bar can claim none of these virtues. Its onus falls on the *lawful* speech of those who can or choose to communicate it only by anonymous leaflet, leaving undisturbed *unlawful* speech circulated anonymously and for profit. Such a classification bears no reasonable relation to its purpose, and therefore fails to afford equal protection of the laws.

But the ordinance is inequitous for still another reason, in that its burden lays upon the lawful utterances of the pamphleteer, but not on the same speech when uttered by the editor or the printer. We fail to appreciate the logic in withholding constitutional protection from the speech of some which others in the same class may continue to enjoy simply because they put it between hard covers or in a letter to the editor.[32] We do not believe that the law has yet reached that stage of development which would permit a City to parcel out liberty of speech to those only who are able and willing to make a profit from it. Until that happens, the classification at bar must be regarded as an arbitrary deprivation of liberty without due process of law, and a denial of the equal protection of the laws.

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[32] Compare petitioner's pamphlets with those of the A and D Market [R. 17-20B].

CONCLUSION

The judgment should be reversed.

Respectfully submitted,

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APPENDIX "A"

Constitutional Provisions and Statutes Involved

1. The pertinent provisions of the First Amendment to the United States Constitution are:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ."

2. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The provisions of Section 28.06 of the Municipal Code of the City of Los Angeles are:

> "28.06—Hand-Bill. Name and Address of Manufacturer-Distributor:
>
> "No person shall distribute any hand-bill in any place under any circumstances, which does not have printed on the cover; or the face thereof, the name and address of the following:
>
> (a) The person who printed, wrote, compiled or manufactured the same.
>
> (b) The person who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said hand-bill shall also appear thereon."